

AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN SENATE JUNE 21, 1999

AMENDED IN SENATE JUNE 15, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY MAY 6, 1999

AMENDED IN ASSEMBLY APRIL 27, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 791

Introduced by Assembly Members Thomson and Migden
(Coauthor: Assembly Member Aroner)
(Coauthors: Senators O’Connell and Solis)

February 24, 1999

An act to amend Section 2089 of the Business and Professions Code, to add Section 1254.7 to the Health and Safety Code, ~~and to amend Section 9541 of the Welfare and Institutions Code~~, relating to the healing arts.

LEGISLATIVE COUNSEL’S DIGEST

AB 791, as amended, Thomson. Healing arts: pain management.

Existing law regulates the practice of medicine, and sets forth curriculum requirements for all applicants for a physician’s and surgeon’s license.

This bill would add pain management and end-of-life care to the curriculum requirements for persons entering medical school on or after June 1, 2000.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Services. Under existing law, violation of these provisions is a misdemeanor.

This bill would require every health facility licensed pursuant to these provisions, as a condition of licensure, to include pain as an item to be assessed at the same time as vital signs are taken. By changing the definition of a crime, this bill would impose a state-mandated local program.

~~Existing law establishes the Health Insurance Counseling and Advocacy Program within the California Department of Aging. Existing law requires the department to be responsible for acting as a clearinghouse for information and materials relating to Medicare, managed care, health and long-term care related life and disability insurance, and related health care coverage plans. Existing law specifies the responsibilities of direct services contractors with respect to this program.~~

~~This bill would require the department to be responsible for acting as a clearinghouse for information and materials relating to advance health care directives, as specified. This bill would require direct services contractors to be responsible for counseling and community education with respect to advance directives emphasizing patient autonomy and self-reliance.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2089 of the Business and
2 Professions Code is amended to read:



1 2089. (a) Each applicant for a physician's and
2 surgeon's certificate shall show by official transcript or
3 other official evidence satisfactory to the Division of
4 Licensing that he or she has successfully completed a
5 medical curriculum extending over a period of at least
6 four academic years, or 32 months of actual instruction,
7 in a medical school or schools located in the United States
8 or Canada approved by the division, or in a medical school
9 or schools located outside the United States or Canada
10 which otherwise meets the requirements of this section.
11 The total number of hours of all courses shall consist of a
12 minimum of 4,000 hours. At least 80 percent of actual
13 attendance shall be required. If an applicant has
14 matriculated in more than one medical school, the
15 applicant must have matriculated in the medical school
16 awarding the degree of doctor of medicine or its
17 equivalent for at least the last full academic year of
18 medical education received prior to the granting of the
19 degree.

20 (b) The curriculum for all applicants shall provide for
21 adequate instruction in the following subjects:

22 Alcoholism and other chemical substance dependency,
23 detection and treatment.

24 Anatomy, including embryology, histology, and
25 neuroanatomy.

26 Anesthesia.

27 Biochemistry.

28 Child abuse detection and treatment.

29 Dermatology.

30 Geriatric medicine.

31 Human sexuality.

32 Medicine, including pediatrics.

33 Neurology.

34 Obstetrics and gynecology.

35 Ophthalmology.

36 Otolaryngology.

37 Pain management and end-of-life care.

38 Pathology, bacteriology, and immunology.

39 Pharmacology.

40 Physical medicine.

- 1 Physiology.
- 2 Preventive medicine, including nutrition.
- 3 Psychiatry.
- 4 Radiology, including radiation safety.
- 5 Spousal or partner abuse detection and treatment.
- 6 Surgery, including orthopedic surgery.
- 7 Therapeutics.
- 8 Tropical medicine.
- 9 Urology.

10 (c) The requirement that an applicant successfully
11 complete a medical curriculum that provides instruction
12 in pain management and end-of-life care shall only apply
13 to a person entering medical school on or after June 1,
14 2000.

15 SEC. 2. Section 1254.7 is added to the Health and
16 Safety Code, to read:

17 1254.7. (a) It is the intent of the Legislature that pain
18 be assessed and treated promptly, effectively, and for as
19 long as pain persists.

20 (b) Every health facility licensed pursuant to this
21 chapter shall, as a condition of licensure, include pain as
22 an item to be assessed at the same time as vital signs are
23 taken. The health facility shall ensure that pain
24 assessment is performed in a consistent manner that is
25 appropriate to the patient. The pain assessment shall be
26 noted in the patient's chart in a manner consistent with
27 other vital signs.

28 ~~SEC. 3. Section 9541 of the Welfare and Institutions~~
29 ~~Code is amended to read:~~

30 ~~9541. (a) The Legislature finds and declares that the~~
31 ~~purpose of the Health Insurance Counseling and~~
32 ~~Advocacy Program is to provide Medicare beneficiaries~~
33 ~~and those imminent of becoming eligible for Medicare~~
34 ~~with counseling and advocacy as to Medicare, private~~
35 ~~health insurance, and related health care coverage plans,~~
36 ~~on a statewide basis, and preserving service integrity, and~~
37 ~~to provide counseling on advance directives.~~

38 ~~(b) The department shall be responsible for, but not~~
39 ~~limited to, doing all of the following:~~



1 ~~(1) To act as a clearinghouse for information and~~
2 ~~materials relating to Medicare, managed care, health and~~
3 ~~long-term care related life and disability insurance, and~~
4 ~~related health care coverage plans.~~

5 ~~(2) To develop additional information and materials~~
6 ~~relating to Medicare, managed care, and health and~~
7 ~~long-term care related life and disability insurance, and~~
8 ~~related health care coverage plans, as necessary.~~

9 ~~(3) To act as a clearinghouse for information and~~
10 ~~materials relating to advance directives, including, but~~
11 ~~not limited to, durable powers of attorney for health care~~
12 ~~established pursuant to Part 4 (commencing with Section~~
13 ~~4600) of Division 4.5 of the Probate Code.~~

14 ~~(c) Notwithstanding the terms and conditions of the~~
15 ~~contracts, direct services contractors shall be responsible~~
16 ~~for, but not limited to, all of the following:~~

17 ~~(1) Community education to the public on Medicare,~~
18 ~~long-term care planning, private health and long-term~~
19 ~~care insurance, managed care, and related health care~~
20 ~~coverage plans.~~

21 ~~(2) Counseling and informal advocacy with respect to~~
22 ~~Medicare, long-term care planning, private health and~~
23 ~~long-term care insurance, managed care, and related~~
24 ~~health care coverage plans.~~

25 ~~(3) Referral services for legal representation or legal~~
26 ~~representation with respect to Medicare appeals,~~
27 ~~Medicare related managed care appeals, and life and~~
28 ~~disability insurance problems. Legal services provided~~
29 ~~under this program shall be subject to the understanding~~
30 ~~that the legal representation and legal advocacy shall not~~
31 ~~include the filing of lawsuits against private insurers or~~
32 ~~managed health care plans. In the event that legal~~
33 ~~services are contracted for by the agency separately from~~
34 ~~counseling and education services, a formal system of~~
35 ~~coordination and referral from counseling services to~~
36 ~~legal services shall be established and maintained.~~

37 ~~(4) Educational services supporting long-term care~~
38 ~~educational activities aimed at the general public,~~
39 ~~employers, employee groups, senior organizations, and~~

1 other groups expressing interest in long-term care
2 planning issues.

3 (5) Educational services emphasizing the importance
4 of long-term care planning, promotion of self-reliance
5 and independence, and options for long-term care.

6 (6) To the extent possible, support additional
7 emphasis on community educational activities that would
8 provide for announcements on television and in other
9 media describing the limited nature of Medicare, the
10 need for long-term care planning, the function of
11 long-term care insurance, and the availability of
12 counseling and educational literature on those subjects.

13 (7) Recruitment, training, coordination, and
14 registration, with the department, of health insurance
15 and advance directive counselors, including a large
16 contingent of volunteer counselors designed to expand
17 services as broadly as possible.

18 (8) A systematic means of capturing and reporting all
19 required community-based services program data, as
20 specified by the department.

21 (9) Counseling and community education with
22 respect to advance directives emphasizing patient
23 autonomy and self-reliance.

24 (d) Participants who volunteer their time for the
25 health insurance counseling and advocacy program may
26 be reimbursed for expenses incurred, as specified by the
27 department.

28 (e) The department, the Department of
29 Corporations, and the Department of Insurance shall
30 jointly develop interagency procedures for referring and
31 investigating suspected instances of misrepresentation in
32 advertising or sales of services provided by Medicare,
33 managed health care plans, and life and disability insurers
34 and agents.

35 (f) (1) No health insurance or advance directive
36 counselor shall provide counseling services under this
37 chapter, unless he or she is registered with the
38 department.

39 (2) No registered volunteer health insurance or
40 advance directive counselor shall be liable for his or her

1 negligent act or omission in providing counseling services
2 under this chapter. No immunity shall apply to health
3 insurance or advance directive counselors for any grossly
4 negligent act or omission or intentional misconduct.

5 (3) No registered volunteer health insurance or
6 advance directive counselor shall be liable to any
7 insurance agent, broker, employee thereof, or similarly
8 situated person, for defamation, trade libel, slander, or
9 similar actions based on statements made by the
10 counselor when providing counseling, unless a statement
11 was made with actual malice.

12 (4) Prior to providing any counseling services, health
13 insurance and advance directive counselors shall disclose,
14 in writing, to recipients of counseling services pursuant
15 to this chapter that the counselors are acting in good faith
16 to provide information about health insurance policies
17 and benefits and advance directives on a volunteer basis,
18 but that the information shall not be construed to be legal
19 advice, and that the counselors are, generally, not liable
20 unless their acts and omissions are grossly negligent or
21 there is intentional misconduct on the part of the
22 counselor.

23 (5) The department shall not register any applicant
24 under this section unless he or she has completed
25 satisfactorily training which is approved by the
26 department, and which shall consist of not less than 24
27 hours of training that shall include, but is not limited to,
28 all of the following subjects:

29 (A) Medicare.

30 (B) Life and disability insurance.

31 (C) Managed care.

32 (D) Retirement benefits and principles of long-term
33 care planning.

34 (E) Counseling skills.

35 (F) Advance directives.

36 (G) Any other subject or subjects determined by the
37 department to be necessary to the provision of counseling
38 services under this chapter.

39 (6) The department shall not register any applicant
40 under this section unless he or she has completed all

~~1 training requirements and has served an internship of
2 eocounseling of not less than 10 hours with an
3 experienced counselor and is determined by the local
4 program manager to be capable of discharging the
5 responsibilities of a counselor. An applicant shall sign a
6 conflict of interest and confidentiality agreement, as
7 specified by the department.~~

~~8 (7) A counselor shall not continue to provide health
9 insurance or advance directive counseling services unless
10 he or she has received continuing education and training,
11 in a manner prescribed by the department, on Medicare,
12 managed care, life and disability insurance, and other
13 subjects during each calendar year.~~

~~14 (g) For purposes of this section, "advance directive"
15 means instructions relating to the provision of health care
16 when individuals are unable to communicate their wishes
17 regarding medical treatment. "Advance directive" may
18 be a written document authorizing an agent or surrogate
19 to make decisions on an individual's behalf, including a
20 durable power of attorney for health care, as defined in
21 Section 4700 of the Probate Code, a written statement
22 such as a declaration, as defined in Section 7186.5, or some
23 other form of instruction recognized under state law
24 specifically addressing the provision of health care.~~

~~25 SEC. 4.~~

~~26 SEC. 3. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.~~